

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

THIS DOCUMENT RELATES TO:  
TRACK TWO SETTLEMENT

Master Civil No. 01-cv-12257

MDL No. 1456

Judge Patti B. Saris

**ORDER FOR FINAL CONSIDERATION OF TRACK TWO SETTLEMENT**

NOVEMBER \_\_\_, 2010

Saris, U.S.D.J.

This Court has heard from counsel at hearings on the status of the Class 1, 2 and 3 aspects of the proposed Settlement with the Track Two Defendants (the “Track Two Settlement”). This Court also received, during a hearing on the BMS Settlement on November 19, 2010, the sworn testimony of Cindy Weigel, an employee of Buccaneer, a Vangent Company (“Buccaneer”), and the vendor working with CMS to produce data to effectuate notice to Class 1, which data includes information about potential members of Class 1 in this potential settlement. The Track Two Settlement was first proposed quite some time ago. The participants must proceed with dispatch. This Court has jurisdiction over the parties, the parties’ counsel, the data vendor and the Claims Administrator. Accordingly, this Court ORDERS the following:

**1. Data Production.** This Court hereby orders that the Centers for Medicare and Medicaid Services (“CMS”) and its vendors, the Research Data Assistance Center (“RESDAC”) and Buccaneer, shall, no later than December 15, 2010, produce to the Claims Administrator electronic data sufficient to identify all transaction information for individuals for whom CMS

reimbursed any of the specific drugs involved in the Settlements, as identified in a separate list of 356 J Codes or HCPCS. These HCPCS should be run against the Outpatient SAF, Carrier SAF and DME SAF files for all beneficiaries that had any one of the submitted HCPCS, outputting only the claims with the submitted HCPCS. These should also be run against the Vital Status file with names and addresses (alive and dead). The exact data to be provided is further identified in the letter from Buccaneer to Class Counsel dated November 1, 2010.

**2. Class Counsel To Assist.** This Court hereby orders that Class Counsel shall take all reasonable steps necessary to ensure that the necessary data is transferred to the Claims Administrator by December 15, 2010.

**3.** If the data mentioned above is not produced by December 15, 2010, the Court intends to hold a hearing to determine if CMS, RESDAC, Buccaneer and/or Class Counsel are in contempt of this Order.

**4. Further Schedule.** This Court hereby further orders Plaintiffs and Class Counsel, the Claims Administrator, the Track 2 Defendants and their counsel to exercise all reasonable efforts to complete the Track Two Settlement approval process on the following schedule:

December 31, 2010	Class Counsel To File A Status Report Regarding Planned Notice and Notice Expenses In Connection with the Proposed Mailing to Potential Class One Members
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January 31, 2011	Direct Mail Notice to Potential Track Two Class One Members To Be Sent (Unless Otherwise Ordered By the Court In Light of the December 31 Report)
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February 28, 2011	Class Plaintiffs file Motion for Attorney Fees and Expenses
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February 28, 2011	Deadline for Class Member to Return Initial Notice Cards
March 28, 2011	Deadline for Objections, Exclusions and Filing of Claims
April 8, 2011	Class Counsel Files Final Approval Papers and Recommendations on Use of Any Excess Settlement Funds (the Court may thereafter issue, prior to the final approval hearing date, an order to show cause why a particular use of excess funds is not appropriate)

**5. Final Approval Hearing.** The Final Approval Hearing for the Track Two Settlement will be held on April \_\_\_, 2011 at 2:00 P.M. in Courtroom 22. A postponement will only be granting sparingly, and only after (i) a showing of good cause measured by the protracted nature of these proceedings and (ii) with sufficient notice to the Court in advance of the hearing date.

**6. Status Reports.** Class Counsel shall file with the Court monthly status reports detailing the progress of the Track Two Settlement. These reports shall include a statement about whether the deadlines in paragraph 4 of this Order have been complied with and whether there is a substantial chance that future deadlines will not be met. The first such report shall be filed on December 17, 2010. Subsequent reports shall be filed on the first day of each month.

**7. Service.** Class Counsel shall serve copies of this Order on the Claims Administrator, CMS, RESDAC and Buccaneer. Class Counsel shall thereafter promptly file with the Court a notice of completion of service.

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Patti B. Saris  
United States District Judge